

Amendment No. 1 to SB3209

Crowe
Signature of Sponsor

AMEND Senate Bill No. 3209*

House Bill No. 3529

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 4, Chapter 3, is amended by adding the following as new part 27:

4-3-2701.

(a) There is hereby created the department of aging.

(b) The commissioner of aging shall determine the organization of and the methods of procedure within the department which are deemed suitable or necessary to exercise the powers conferred and perform the duties imposed by law and shall appoint, in accordance with applicable personnel guidelines and budgetary limitations, such assistants as are deemed necessary to effectively discharge the duties of the office in an orderly and efficient manner.

4-3-2702.

(a) The commissioner is vested with power to prescribe rules and regulations not inconsistent with law and prepare such forms as the commissioner may deem proper for the administration of the duties of the commissioner's office.

(b) The department of aging has the power to:

(1) Administer the responsibilities assigned to the department pursuant to title 71, chapter 2, part 1; and

(2) Administer such other programs as may be assigned by law.

SECTION 2. Tennessee Code Annotated, Title 71, Chapter 2, Part 1, is amended by deleting the part in its entirety and by substituting instead the following:

71-2-101.

(a) The provisions of this part shall be administered by the department of aging.

(b) The purposes of this part are to provide a comprehensive and coordinated service system for the state's aging population, giving high priority to those persons in greatest need, to conduct studies and research into the needs and problems of the aged, and to provide a system of home and community based long-term care services which is responsive to the needs of all Tennesseans regardless of age or economic status and to implement the provisions of the Older Americans Act of 1965, as amended at 42 U.S.C. § 3001 et seq. and its implementing regulations at 45 C.F.R. § 1321 et seq.

71-2-102. As used in this part, unless the context otherwise requires:

(1) "Area agency on aging" means any agency which has been designated by the department to plan for and provide services to the older persons within a defined geographic area;

(2) "Commissioner" means the commissioner of aging;

(3) "Department" means the department of aging;

(4) "Home and community based long term care" means supportive services, including but not limited to personal assistance, homemaker and chore services, adult day care services, assistive technology, home delivered meals, assisted transportation and mobility services, respite and hospice care, and rehabilitative care, which are provided to older persons to remain independent and avoid inappropriate institutionalization and which help individuals maintain physical, social, and spiritual independence in the least restrictive environment;

(5) "Older Americans Act" means the Older Americans Act of 1965, as amended (42 U.S.C. § 3001 et seq.) and its implementing regulations at 45 C.F.R. § 1321.01 et seq.;

(6) "Older person" means a person who has reached of sixty (60) years of age;

(7) "Planning and service area" means a geographical division of the state which serves as an administrative unit for the purpose of planning and delivering services to older persons.

71-2-103.

(a) The department of aging shall plan, develop, and administer projects, programs, services and state and federal funds designated for, and relating to, older persons in this state, including those sponsored by the federal government, when such projects, programs and services are not the specific responsibility of another state agency pursuant to some other federal or state law.

(b) The department shall be designated as the sole state agency to plan and administer all state activities related to and authorized under the Older Americans Act, except for Title V activities under the Older Americans Act which shall be administered by the department of labor and workforce development.

(c)

(1) Notwithstanding any state law or regulation to the contrary, the department may provide assistance under the Older Americans Act at any maximum income threshold permitted by federal law.

(2) Assistance levels shall be determined based upon those prescribed by federal law and are also subject to any necessary and available state funding.

71-2-104.

(a) The department shall:

(1) Allocate funds for projects and programs for older persons, subject to the limits of the appropriation by the general assembly and funds available or received from the federal government for such projects and programs. The department is authorized to accept funds from the federal government and private sources and to administer such funds to achieve its purposes pursuant to the provisions of § 71-2-103;

(2) Serve as an advocate within government and in the community for older persons in Tennessee;

(3) Designate planning and service areas and area agencies on aging in accordance with the Older Americans Act and federal regulations promulgated thereunder. The department shall review the boundaries of the planning and service areas from time to time and shall change them as necessary to comply with the Older Americans Act or to reflect changes in governmental boundaries or major changes in population distribution;

(4) Promulgate any rules and regulations pursuant to the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, that the commissioner deems necessary for carrying out the provisions of this part and any other laws and programs it is assigned to administer and for the purpose of conducting administrative hearings under such Act as may be necessary for the administration of its programs;

(5) Designate hearing officers as it deems necessary to conduct any contested case hearings concerning the department's programs and who shall have the authority to administer oaths and issue subpoenas and orders relating to such hearings;

(6) Issue administrative subpoenas to obtain any information necessary for investigations relative to the conduct of its programs;

(7) Receive from and provide cooperation to other state departments and agencies in carrying out the policies and objectives of this part; and

(8) Enter into such contracts and make such grants within the limits of appropriated funds, as are necessary or appropriate under this part, and in a manner consistent with state or federal law.

(b) In addition to the powers, responsibilities or duties granted to the department elsewhere in this part, the department may:

(1) Advise the governor and the heads of state departments and agencies regarding policies, programs, services, allocation of funds, and the needs of older persons adults in Tennessee and make recommendations for legislative action to the governor and to the general assembly;

(2) Hold hearings, conduct research and other appropriate activities to determine the needs of older persons adults in the state, including particularly, but not limited to, their needs for health and social services, and to determine the existing services and facilities, private and public, available to meet those needs;

(3) Develop and conduct, alone or in coordination with other agencies, research and demonstration projects and programs that provide training, education, and services to advance the interests of older persons adults; and

(4) Stimulate more effective use of existing resources and services for older persons adults and develop programs, opportunities and services which are not otherwise provided for older persons adults, with the aim of developing a comprehensive and coordinated system for the delivery of health and social services.

(c)

(1) In addition to the powers, responsibilities and duties granted to the department, the department shall initiate an outreach program to provide Medicare-eligible Tennesseans information and education relative to obtaining prescription drugs at a discounted cost, and obtaining prescription drugs through programs based upon an individual's income. Education and information shall include, but not be limited to the availability of:

(A) Prescription drugs through patient assistance programs offered by pharmaceutical manufacturers;

(B) Prescription drug coverage for individuals who are eligible for Medicare Part D, TennCare, federal veterans affairs programs, Medicare supplemental policies and any other program that provides such coverage; and

(C) Prescription discount cards or information on how to access other programs that provide discounted prescription drugs to eligible participants.

(2) Minimally, such outreach shall include:

(A) Assistance in the implementation of a program to assist Medicare-eligible persons in processing the necessary documents in order to participate in the programs in subdivision (c)(1);

(B) A toll-free number manned during business hours to provide information regarding the programs outlined in subdivision (c)(1);

(C) A website or referral to website links that provide information regarding the programs outlined in subdivision (c)(1); and

(D) Presentations to senior groups regarding the availability of the programs outlined in subdivision (c)(1).

(3) The department shall implement the outreach program within the department's available resources.

(4) The department may delegate any or all such responsibilities to a private or public contractor.

(5) The department is authorized to make application for grants to fund programs set out in subdivision (c)(1).

(d) Nothing in this part or chapter 5, part 14 of this title shall authorize the department to exercise any control or authority over any aspect of the

administration of programs for home and community based long term care that are operating on the basis of federal waivers in effect as of the effective date of this act, except as to those aspects of such program as may be delegated to it or for which it may provide assistance pursuant to contractual arrangements or agreements with other state or federal agencies.

71-2-105.

(a) The commissioner shall be the chief administrative officer of the department and shall serve at the pleasure of the governor. The commissioner shall have such education as deemed necessary by the governor, with a minimum of five (5) years' experience in the fields of aging, or administrative experience as necessary to administer the programs under this part.

(b) The commissioner shall:

(1) Be available to serve or be represented on state level committees or bodies where the purpose of that state body or committee is concerned with the general health, education or welfare of the citizens of Tennessee when older persons are affected by the decisions of that body;

(2) Develop, as required under the provisions of the Older Americans Act, a plan for state programs, services and activities for older persons, to be updated periodically;

(3) Supervise the expenditure of funds and be responsible for complying with all applicable provisions of state and federal law in the receipt of and disbursement of funds;

(4) Serve as an advocate within government and in the community for older persons adults in Tennessee;

(5) Employ or contract for the services of experts and technical consultants as may be necessary to carry out the purposes of this part;

(6) Conduct evaluations and prepare reports in accordance with the terms of the Older Americans Act and other state and federal laws; and

(7) Within the limits of appropriated funds, employ such personnel as maybe required to carry out the provisions of this part. The commissioner shall appoint and may remove all such personnel in accordance with the civil service system.

71-2-106.

(a) Within the department there shall be an established office of the state long term care ombudsman (hereinafter "the office"), which shall carry out those functions delineated in § 307(a)(12) of the Older Americans Act.

(b) The office shall designate and contract with, either directly or through the area agency on aging, a local grantee to establish and operate a local ombudsman program in each of the designated planning and service areas. Each local ombudsman program shall carry out the duties of the office in each area through paid staff and trained volunteers. For the purposes of carrying out those duties, and only to the extent required by § 307(a)(12)(H)(vi) of the Older Americans Act, each local program unit will be considered to be a "subdivision" of the office; provided, that this shall have no effect upon the character of local government or private agencies or corporations, and they shall not be considered to be agencies of the state of Tennessee.

(c) Paid staff and volunteers shall be trained as required by and under the supervision of the office, which shall certify those persons who have been properly trained as "representatives" of the office; provided, that local program employees and volunteers shall not be considered to be employees of the state of Tennessee. The office shall maintain a current listing of certified representatives. Certified representatives shall be immune from liability for acts or omissions committed within the scope of their assigned duties, except for

willful, malicious, or criminal acts or omissions or for acts or omissions done for personal gain.

71-2-107.

(a) Notwithstanding any other provision of law, rule, regulation or policy to the contrary, the standards and procedures developed by the department relative to the nutrition program for older persons operated in accordance with the Older Americans Act shall not establish a threshold of an average of twenty (20) congregate meals per day for every site but shall first consider the remote location of a meal site.

(b) For such sites, if a determination is made by the department that the majority of the older persons in the area served by the site are physically unable to attend a congregate meal site on a consistent basis and the health and well-being of such persons would be better maintained by receiving home-delivered meals, the department shall apply a threshold of an average of twenty (20) congregate and home-delivered meals a day for such sites.

71-2-108.

(a) The department shall require its contractors, grantees, and subcontractors to verify individual background information for newly hired employees and volunteers who provide direct care for, have direct contact with, or have direct responsibility for the safety and care of older persons in their homes.

(b) The department shall promulgate rules which develop standard procedures specifying minimum requirements applicable to verifying individual background information or performing a criminal history background check of all paid or volunteer in homecare providers for vulnerable older persons and shall include a background check of available juvenile records as may be maintained by to the Tennessee bureau of investigation or the federal bureau of investigation. Such rules shall take into consideration the person's criminal or juvenile background history involving, at a minimum, crimes against other

persons, including vulnerable adults or children, crimes involving theft, financial exploitation, or misuse of funds and drug offenses. The commissioner is expressly authorized to promulgate such rules as emergency rules pursuant to § 4-5-209 to provide an immediate effective date.

(c) If the criminal and juvenile history background check is conducted by the Tennessee bureau of investigation or the federal bureau of investigation, it shall be conducted by the submission of fingerprints to the Tennessee bureau of investigation or the federal bureau of investigation in such manner as may be required by such agencies. Any cost incurred by the Tennessee bureau of investigation or the federal bureau of investigation shall be paid by the department or organization requesting such investigation and information. If a criminal and juvenile history background check is conducted by the Tennessee bureau of investigation or the federal bureau of investigation, the payment of such costs shall be made in the amounts established by title 38, chapter 6, part 1.

71-2-109.

(a) There is hereby created an advisory council on aging which, at the request of the commissioner, shall provide review of policies, programs and initiatives of the department and for such other purposes as requested by the commissioner.

(b)

(1) The advisory council shall consist of twenty-eight (28) members, who shall be persons who provide leadership in programs for older persons in the state, twenty-eight (28) of whom shall be appointed by the governor in accordance with the provisions of this part.

(2) To the extent possible, representatives may come from such diverse areas as housing, recreation, employment, medicine, nursing, social service, business, adult education, long-term care, religion, research and advocacy.

(3) It is desirable that the commission membership reflect the geographic diversity of the state, and include minorities and women at least in proportion to their presence in the state's population and that at least one-half (1/2) of the membership be representative of the population served.

(4) Staff members of programs funded wholly or in part by the department shall be ineligible to serve as council members.

(c)

(1) Members of the advisory council shall be appointed as follows:

(A) One (1) person shall be appointed from the rural area of each of the nine (9) planning and service areas in consultation with each of the nine (9) advisory councils to the nine (9) area agencies on aging. Such persons may be appointed from two (2) persons nominated by each of such advisory councils. Nothing shall preclude members of such advisory councils from being appointed as advisory council members;

(B) Eight (8) additional persons shall be appointed, one (1) from each of the eight (8) urban areas of Shelby, Davidson, Hamilton, Knox, Madison, Montgomery and Rutherford counties, and the combined tri-city area of Bristol, Kingsport and Johnson City, in consultation with each of the advisory councils to the area agencies on aging in those areas. Each of such persons may be appointed from two (2) persons nominated by each of such advisory councils. Nothing shall preclude members of such advisory councils from being appointed as advisory council members;

(C) One (1) member of the governor's personal staff shall be appointed;

(D) One (1) person who is an active member of a chartered, statewide organization that advocates exclusively for older persons shall be appointed. Each such organization may submit two (2) nominations for this appointment;

(E) One (1) person who is an active member of a federally chartered organization that advocates exclusively for older persons having membership statewide with chapters chartered in this state shall be appointed. Each such organization may submit two (2) nominations for this appointment;

(F) The commissioners of the departments of human services, health, veterans affairs, and mental health and developmental, the division of intellectual disabilities services, and the executive director of the council on intellectual disabilities; and

(G) The speaker of the senate and the speaker of the house of representatives each shall name one (1) legislator from such speaker's respective house to serve on the council as ex officio members without vote to attend and sit with the council in open meetings, in order to report back to the general assembly on actions being taken or considered by the department.

(2) The governor may ask the nominating body in any case for additional nominees.

(d) As vacancies occur on the council, persons shall be appointed to fill the vacancy for the unexpired term, in accordance with the original nomination process.

(e)

(1) Members appointed to serve on the council pursuant to this section shall be appointed in accordance with the criteria established in this section. Members of the commission of aging as it existed prior to

July 1, 2010, may be eligible for nomination and appointment pursuant to the criteria established in this section.

(2) The terms of office for members of the council shall be four (4) years, except for members of the governor's personal staff and cabinet whose terms shall be coterminous with that of the appointing governor, and except for the legislators appointed pursuant to subdivision (c)(1)(G) whose terms shall be coterminous with the terms for which they have been elected to the general assembly. Vacancies shall be filled by appointment pursuant to the criteria in this section only for the remainder of the unexpired term.

(3) A two-year absence from council membership qualifies any member for reappointment following the criteria of this section.

(f) Members of the advisory council shall receive no compensation for their services other than a reimbursement for traveling and other expense incurred in the attendance of meetings required by this part or other meetings authorized by the department. All reimbursement for travel expenses shall be in accordance with the provisions of the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

71-2-110.

(a) The attorney general and reporter shall, when requested, advise the department on matters of law.

(b) The department may acquire, hold, and alienate personal or real property necessary or desirable for the performance of the functions vested in it by law.

71-2-111.

(a) Records containing personally identifying information concerning applicants or recipients of services from the department, whether maintained by

the department or in the possession or control of its contractors or partner agencies shall be confidential.

(b) Except for purposes directly connected with the administration of this part, it is unlawful to solicit, disclose, receive, make use of, authorize or knowingly permit, participate in, or acquiesce in the use of any information concerning, persons applying for or receiving assistance from the department directly or indirectly derived from the records, papers, files, or communications of the department, divisions of the department, its contractors or other partner agencies acquired in the course of the performance of official duties.

(c) Except where information provided to the department pursuant to any federal or state law or regulation for purposes related to services provided by the is otherwise specifically protected from further disclosure or further use by any other federal, state, territorial or other government law or regulation, the department is specifically authorized to further utilize or further disclose any information from its records for any purposes that are directly connected with:

(1) The administration of the plan or program approved under Titles I—XXI of the Social Security Act, or for purposes directly related to the administration of the child abuse laws contained in Tennessee Code Annotated Title 37 and the Adult Protection Act, contained in Tennessee Code Annotated, Title 71, Chapter 6, Part 1;

(2) Any investigations, prosecutions, or civil, criminal or administrative proceeding conducted in connection with the administration of a department program or any plan or program under subdivision (c)(1);

(3) The administration of any other state or federal or state or federally assisted program that provides assistance, in cash or in kind, or services, directly to individuals on the basis of need;

(4) Reporting to an appropriate agency, official, medical treatment or mental health services provider or provider information under circumstances that indicate that the older person's health or welfare is

threatened by any potential for abuse, neglect, injury, exploitation, misappropriation of property or exposure to disease, or, that presents a threat by the older person to harm themselves or others due to threats of violence or circumstances that would expose others to contagious disease; or

(5) Inquiries from legislative representatives concerning the provision of services to an older person who is a constituent of the legislator upon a release for information about that person authorized in any suitable manner as determined by the department or its contractors. Nothing in this subdivision (c)(5) shall be construed to authorize release of any information that is otherwise protected as confidential pursuant to this section or by other state or federal law or regulation.

(d) Except where information provided to the department pursuant to any federal or state law or regulation for purposes related to services provided by the is otherwise specifically protected from further disclosure or further use by any other federal, state, territorial or other government law or regulation, the department may provide identifying information from its records that is directly related to research conducted pursuant to procedures that ensure the confidentiality of such information and that have received approval as to the procedures from the supervisory authority of the researcher.

(e) A violation of this section is a Class C misdemeanor.

SECTION 3. Tennessee Code Annotated, Section 4-3-101, is amended by adding the following as a new item to be appropriately designated:

() Department of aging;

SECTION 4. Tennessee Code Annotated, Section 4-3-111, is amended by adding the following as a new item to be appropriately designated:

() Commissioner of aging, for the department of aging;

SECTION 5. Tennessee Code Annotated, Section 8-23-101(c), is amended by adding the following as a new item to be appropriately designated:

() Commissioner of aging;

SECTION 6. Tennessee Code Annotated, Section 4-29-232(a)(10) is amended by deleting the subdivision in its entirety.

SECTION 7. Tennessee Code Annotated, Section 4-29-233(a) is amended by adding the following as a new item:

() Department of aging, created by Section 4-3-101;

SECTION 8. Any provision of this act, or application thereof, which is inconsistent with federal law, rule or regulation shall be deemed to be construed as being consistent with federal law, rule or regulation.

SECTION 9.

(a) Notwithstanding any provision of law to the contrary, upon the effective date of this act all employees of the commission of aging and disability shall be transferred to the department of aging created by Tennessee Code Annotated, Section 4-3-101.

(b) All reports, documents, surveys, books, records, papers or other writings in the possession of the commission on aging and disability with respect to administering the provisions of Tennessee Code Annotated, Title 71, Chapter 2, assigned to the department of aging by this act, shall be transferred to and remain in the custody of the department of aging .

(c) All leases, contracts and all contract rights and responsibilities in existence with the commission on aging and disability with respect to the duties transferred by this section shall be preserved and transferred to the department of aging.

(d) All assets, liabilities and obligations of the commission on aging and disability with respect to the duties transferred by this section shall become the assets, liabilities and obligations of the department of aging.

SECTION 10.

(a) Contracts or leases entered into prior to the effective date of this section, with respect to any program or function transferred to the department of

aging with any entity, corporation, agency, enterprise or person, shall continue in full force and effect as to all essential provisions in accordance with the terms and conditions of the contracts in existence on the effective date, to the same extent as if such contracts had originally been entered into by and between such entity, corporation, agency, enterprise or person and the department of aging, unless and until such contracts or leases are amended or modified by the parties thereto or until the expiration of such contract.

(b) The provisions of this act shall not be implemented in any manner which violates the prohibition against impairment of contract obligations as contained in Article 1, Section 20, of the Constitution of Tennessee.

SECTION 11. Upon the effective date of this section, the department of aging, through its commissioner, shall have the authority to receive, administer, allocate, disburse and supervise any grants and funds from whatever sources, including, but not limited to, the federal, state, county and municipal governments on a state, regional, county or any other basis, with respect to any programs and/or responsibilities outlined in this act or assigned to the department by law, regulation or order. Exercise of this authority shall not be inconsistent with laws or regulations governing the appropriation and disbursement of funds as administered by the department of finance and administration.

SECTION 12.

(a) All current rules, regulations, orders, decisions and policies heretofore issued or promulgated by an agency of state government whose functions have been transferred under the provisions of this act shall remain in full force and effect and shall hereafter be administered and enforced by the department of aging.

(b) The department of aging, through its commissioner, shall have the authority, consistent with the statutes and regulations pertaining to the programs and functions transferred by this act, to modify or rescind orders, rules and regulations, decisions or policies heretofore issued and to adopt, issue or

promulgate new orders, rules and regulations, decisions or policies as may be necessary for the administration of the programs or functions herein transferred.

(c) In order to comply with the effective date set forth within this act, the department may implement its rulemaking authority through promulgation of emergency rules in accordance with Tennessee Code Annotated, Section 4-5-209; provided, permanent rules shall be promulgated pursuant to the Uniform Administrative Procedures Act compiled in Title 4, Chapter 5, Part 1. Upon delivering a draft of any such emergency rules to the attorney general and reporter for approval as required by such section, the department shall simultaneously deliver a copy of such draft emergency rules to the chair of the government operations committee of the senate and to the chair of the government operations committee of the house of representatives.

SECTION 13. The Tennessee Code Commission is directed to change references to the commission on aging or the commission on aging and disability to references to the department of aging to implement the provisions of this act in Tennessee Code Annotated, Sections 4-3-123, 4-3-1405, 13-14-106, 34-7-103, 34-7-104, 34-7-105, 37-2-414, 49-8-802, 55-4-223, 56-1-211, 67-6-322, 68-11-203, 68-11-815, 68-11-1702, 68-14-313, 71-5-1418, 71-5-1419, 71-5-1422, and 71-5-1606, and 71-5-1608.

SECTION 14. As sections, parts, titles, chapters and volumes of Tennessee Code Annotated are amended, repealed, revised and replaced, the Tennessee Code Commission is directed to change references to the commission on aging or the commission on aging and disability to references to the department of aging to reflect the transfer required by the provisions of this act. After the effective date of this act, any reference to the commission on aging or the commission on aging and disability shall be deemed to be a reference to the department of aging.

SECTION 15. Section 6 and the rulemaking authority of this act shall take effect on becoming a law, and all other provisions of this act shall take effect on July 1, 2010, the public welfare requiring it.